Nos. 89-1452 and 89-1453

In the Supreme Court of the United States

OCTOBER TERM, 1989

MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST, INC.,
ET AL., PETITIONERS

v.

UNITED DISTRIBUTION COMPANIES, ET AL.

FEDERAL ENERGY REGULATORY COMMISSION, PETITIONER

v.

UNITED DISTRIBUTION COMPANIES, ET AL.

---

*ON PETITIONS FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT*

BRIEF FOR THE RESPONDENTS IN OPPOSITION

C. WILLIAM COOPER
UNITED DISTRIBUTION COMPANIES
203 Pittsburgh National Bank Building
P.O. Box 562
Sewickley, PA 15143
(412) 741-4836

ROBERTA LEE HALLADAY *
PETER BUSCEMI
MORGAN, LEWIS & BOCKIUS
1800 M Street, N.W.
Washington, D.C. 20036
(202) 467-7000
Counsel for United Distribution Companies

* *Counsel of Record*

*(Additional Counsel for Respondents Are Listed
on the Signature Page at the Conclusion of This Brief)*

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

Whether the court of appeals correctly ruled that Order No. 451 and Order No. 451-A of the Federal Energy Regulatory Commission are unlawful because:

(a) they violate Sections 104(b)(2) and 106(c) of the Natural Gas Policy Act of 1978 by effectively eliminating price regulation of old gas; and

(b) they violate Section 7(b) of the Natural Gas Act by authorizing automatic abandonment, at the producer's option, of contractual obligations to sell old gas.

PARTIES TO THE PROCEEDINGS

To supplement the list of parties provided in the petitions, and to comply with this Court's Rule 29.1, Appendix A contains a list of respondents. The list includes the parent companies and subsidiaries (except wholly owned subsidiaries) of each corporate respondent.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES Page

STATUTES, REGULATIONS, AND ADMINISTRATIVE ORDERS

TABLE OF AUTHORITIES—Continued

Page

MISCELLANEOUS

TABLE OF AUTHORITIES—Continued

In the Supreme Court of the United States

OCTOBER TERM, 1989

No. 89-1452

MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST, INC., ET AL., PETITIONERS

v.

UNITED DISTRIBUTION COMPANIES, ET AL.

No. 89-1453

FEDERAL ENERGY REGULATORY COMMISSION, PETITIONER

v.

UNITED DISTRIBUTION COMPANIES, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

STATEMENT OF THE CASE

Petitioners challenge a decision vacating two orders of the Federal Energy Regulatory Commission that effectively deregulated the prices of so-called "old gas." "Old gas" is low-cost natural gas that was already in production, dedicated to the interstate market, and regulated under the Natural Gas Act ("NGA"), 15 U.S.C. §§ 717 *et seq.* (1988), when Congress enacted the Natural Gas Policy Act ("NGPA"), 15 U.S.C. §§ 3301 *et seq.* (1988), in 1978. In the NGPA, Congress chose, after a lengthy

political battle, to retain price regulation for most old gas while gradually deregulating the price of new gas (*i.e.*, gas produced from wells that began production after the effective date of the NGPA). Eight years later, however, in June and December 1986, the Commission issued Order No. 451 and Order No. 451-A, which removed all effective price controls from old gas and thus violated the legislative compromise reflected in the NGPA.[1] The Commission purported to act under Sections 104(b)(2) and 106(c) of the NGPA, which authorize the Commission to increase the "maximum lawful ceiling price" for old gas as long as the ceiling price prescribed is "just and reasonable within the meaning of the Natural Gas Act." 15 U.S.C. §§ 3314(b)(2), 3316(c).

Soon after their issuance, Order No. 451 and Order No. 451-A were challenged by the numerous parties who are now respondents in this Court. Ironically, these are the very parties whom the Commission alleged would benefit from its action, but who in fact have been greatly harmed by it. The parties opposing the Commission's orders represent every segment of the natural gas industry except gas producers. They include a diverse group of consumer protection advocates, state public utility commissions (including those of California and New York), state offices of consumer counsel, interstate natural gas pipelines, municipally and privately owned local distribution companies, and trade associations representing local distribution company interests. Many of the respondents represent consumers who rely on natural gas to meet basic human energy needs.

By contrast, the parties defending the Commission's orders (in addition, of course, to the Commission itself) consist primarily of the actual beneficiaries of the Commission's action, large corporate producers of natural gas. These companies have reaped substantial profits as the Commission's orders have driven up the prices of old gas, and they are seeking review in this Court in an effort to preserve their gains.

[1] *See* Order No. 451, "Ceiling Prices; Old Gas Pricing Structure," 51 Fed. Reg. 22168-22223 (June 18, 1986); Order No. 451-A, "Ceiling Prices; Old Gas Pricing Structure," 51 Fed. Reg. 46762-46821 (December 24, 1986).

To place the current controversy in perspective, it is important to review the legislative context in which the Commission's orders were issued, as well as the impact of those orders in the marketplace and the relevant subsequent legislation enacted by Congress. This background, respondents believe, helps to demonstrate why the court of appeals' decision is correct and why review by this Court is not warranted.

A. Evolution of the NGA "Just and Reasonable" Standard.

This Court has long recognized that the primary objective of the NGA is protection of consumers from exploitation by natural gas companies. *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944). The court of appeals in this case, citing *Hope*, correctly observed that in enacting the NGA in 1938, Congress chose "consumer protection as the overriding objective in the implementation of the nation's first natural gas regulatory scheme." Pet. App. 3a.[2]

To this end, Congress vested the Federal Power Commission (the predecessor of the Federal Energy Regulatory Commission) with comprehensive regulatory authority to control the terms and conditions under which natural gas service to the interstate market could be commenced or later abandoned. 15 U.S.C. §§ 717f(c) and (b); *United Gas Pipe Line Co. v. McCombs*, 442 U.S. 529, 535-536 (1979). Congress also vested the Commission with utility-type ratemaking control over the prices and supply of natural gas. *Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Bd.*, 474 U.S. 409, 420

[2] "Pet. App." refers to the Appendix to the government's petition, No. 89-1453.

(1986). And, by requiring that all rates and charges for federally regulated natural gas sales be "just and reasonable," 15 U.S.C. §§ 717c and d, the NGA afforded consumers "a complete, permanent and effective bond of protection from excessive rates and charges." *Atlantic Refining Co. v. Public Service Commission*, 360 U.S. 378, 388 (1959).[3]

In applying the "just and reasonable" standard, this Court ruled in *FPC v. Texaco Inc.*, 417 U.S. 380, 397 (1974), that "[t]he prevailing price in the marketplace cannot be the final measure of 'just and reasonable' rates mandated by the [NGA]." *See also Shell Oil Co. v. FPC*, 520 F.2d 1061, 1084 (5th Cir. 1975), *cert. denied*, 426 U.S. 941 (1976). This follows necessarily from the undisputed proposition that, by adopting the "just and reasonable" standard, Congress chose to *regulate* natural gas rates, not to leave them to the free play of market forces. The "just and reasonable" standard requires "meaningful rate regulation", and "presumed market forces may not comprise the principal regulatory constraint." *Farmers Union Central Exchange, Inc. v. FERC*, 734 F.2d 1486, 1507, 1530 (D.C. Cir.), *cert. denied*, 469 U.S. 1034 (1984).

The logical corollary of this point is that a price ceiling substantially *above* the prevailing market price cannot act as a meaningful restraint; at best, such a ceiling would simply allow market forces to set the ultimate rate charged. *See FERC v. Martin Exploration Management Co.*, 486 U.S. 204, 210 (1988) ("the price ceiling can only impose a direct legal restraint if the market price would be above the price ceiling"); *see*

---

[3] In 1954, this Court ruled that the NGA "required the Commission to take jurisdiction over independent gas producers and to scrutinize the reasonableness of the rates they charged to interstate pipelines." *Public Service Commission v. Mid-Louisiana Gas Co.*, 463 U.S. 319, 328 (1983), citing *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672, 685 (1954).

also Farmers Union Central Exchange, Inc. v. FERC, *supra*, 734 F.2d at 1507 n.47 ("ratemaking that sets charges at levels 'seldom . . . reached in actual practice' and which is 'peripheral to the pricing process' is at best a hair's breadth from total deregulation").

Accordingly, under the NGA "just and reasonable" standard, the price ceilings set by the Commission must serve in reality to regulate natural gas prices. Traditionally, the Commission has accomplished this by setting price ceilings at a level generally sufficient to permit recovery of producers' actual costs plus a reasonable rate of return and depreciation. Pet. App. 2a-4a. Because the costs entailed in finding natural gas and bringing it to market have varied over time, the Commission for many years followed a practice of "vintaging," or fixing different ceiling prices for gas based on the date of the sales contract or the date on which gas was first produced. By 1978, the Commission was enforcing different ceiling prices for some 15 different vintages of gas.

B. The Natural Gas Policy Act of 1978.

From 1938 to 1978, rate regulation under the NGA applied only to the interstate natural gas market. By the 1970's, gas producers could obtain significantly higher prices in the unregulated intrastate markets, and shortages therefore developed in the interstate market. Congress enacted the Natural Gas Policy Act of 1978 primarily to address this problem. *FERC v. Martin Exploration Management Co.*, *supra*, 486 U.S. at 297.

To eliminate the dichotomy between the interstate and intrastate markets, Congress for the first time empowered the Commission to regulate wellhead prices in the intrastate markets. Pet. App. 7a. At the same time, Congress sought to alleviate existing interstate supply shortages by stimulating increased exploration and development activities for new gas supplies. *Public Service Commission v. Mid-Louisiana Gas Co.*, 463 U.S. 319, 334 (1983).

As this Court has recognized on more than one occasion, the NGPA was the product of a legislative compromise: "the Senate passed a bill deregulating interstate gas, the House passed a bill extending federal regulation to intrastate gas, [and t]he Conference Committee struck a compromise." *FERC v. Martin Exploration Management Co., supra,* 486 U.S. at 207 (citations omitted); *see also Public Service Commission v. Mid-Louisiana Gas Co., supra,* 463 U.S. at 331-332. The compromise had two parts.

In the first part, the NGPA established price ceilings, by category, for all wellhead gas sales and provided for automatic increases in these ceilings to keep pace with inflation. §§ 101-110, 15 U.S.C. §§ 3311-3320. To encourage production, the ceiling prices that Congress provided for "new" and "high cost" gas were higher than the rates that the Commission had previously established under the NGA "just and reasonable" standard. By contrast, with respect to old gas already dedicated to the interstate market, Congress maintained the existing regulated prices by incorporating into the NGPA the "just and reasonable" rates previously established by the Commission. § 104, 15 U.S.C. § 3314. As the Commission explained in its brief to this Court in the *Mid-Louisiana* case, "no incentive [was] required" for old gas because the gas already "flowed in interstate commerce prior to enactment of the NGPA . . . ." Brief for Federal Energy Regulatory Commission at 31 n.33 (Nos. 81-1889 *et al.*).

The second part of the NGPA compromise was that, for certain specified categories of gas only, Congress provided for deregulation through the complete elimination of price ceilings. § 121, 15 U.S.C. § 3331. In particular, "the price ceilings for certain 'high-cost' gas were eliminated in 1979, for certain 'old' intrastate gas and 'new' gas in 1985, and for certain other 'new' gas in 1987." *FERC v. Martin Exploration Management Co., supra,* 486 U.S. at 207.

But Congress made no provision for price decontrol of old gas, unless the old gas also qualified under another NGPA price category that expressly fell within the deregulation provisions of Section 121. *Public Service Commission v. Mid-Louisiana Gas Co., supra,* 463 U.S. at 334-335. Thus, where Congress intended for old gas to qualify for market-based pricing, Congress specifically said so in the NGPA itself.

C. The Effects of the NGPA in the Early 1980's.

As the court of appeals noted, "the effects of the NGPA were bittersweet." Pet. App. 8a. The statute did eliminate the distinctions between the interstate and intrastate markets and spurred substantial drilling activities for new gas. Some of the key market assumptions made by Congress did not materialize, however. For example, the price of oil and other competing fuels did not increase, but dropped precipitously; energy conservation was greater than expected; and pipelines began to experience problems in marketing gas purchased from producers under contracts permitting collection of NGPA ceiling prices and containing onerous "take-or-pay" provisions. *See Maryland People's Counsel v. FERC,* 761 F.2d 768, 770-771 (D.C. Cir. 1985) ("the 1978 predictions of the 1985 market were much in error. Factors ranging from the increased wellhead prices and impending total decontrol, to greater energy conservation, to the lower prices of competing fuels, have turned the natural gas shortages of the 1970's into a natural gas surplus").

The failure of the NGPA's marketing assumptions to materialize caused the Commission and the Department of Energy ("DOE") to grow increasingly dissatisfied with the congressional compromise embodied in the NGPA's pricing policies. Thus, in 1981, the Chairman of the Commission testified before a Senate Committee that "the most serious deficiency of the NGPA" was "the statute's establishment of a new *dual market*, that is, one in which some gas prices are regulated while others are

not." 51 Fed. Reg. at 22175 n.59 (emphasis in original). In 1982, the Commission issued a Notice of Inquiry proposing to increase old gas prices, but abandoned the effort due to congressional opposition. Pet. App. 9a-10a. Later, in July 1984 and January 1985, DOE filed two reports with Congress on the natural gas market, as required by NGPA Section 123, 15 U.S.C. § 3333.[4] DOE urged Congress to remove price controls over old gas and comprehensively to deregulate the natural gas market. Congress took no action in response to DOE's recommendations.

Thereafter, the Commission took matters into its own hands. Having failed to obtain what it wanted from Congress, the Commission decided to act on its own, notwithstanding the NGPA compromise.

D. Order No. 451.

In issuing Orders No. 451 and No. 451-A, the Commission sought to deregulate old gas prices. The Commission intended for those prices to be set by the market and not to be affected by any ceiling that might be set by the Commission. The Commission's own statements admit as much. The "fundamental purpose of the rule," the Commission said, "is to assure that old gas prices will more accurately reflect market clearing prices . . . ." 51 Fed. Reg. at 46781.

The Commission also admitted that it lacked the authority simply to announce that all old gas prices would henceforth be set by the market. The Department of Justice ("DOJ") urged the Commission to declare that *any price* paid for gas subject to Sections 104 and 106 of the NGPA is presumed "just and reasonable" within the meaning of the NGA. 51 Fed. Reg. at 22211. In

[4] *The First Report Required by Section 123 of the Natural Gas Policy Act of 1978* (July 1984); "Increasing Competition in the Natural Gas Market," *The Second Report Required by Section 123 of the Natural Gas Policy Act of 1978* (January 1985).

DOJ's view, "[t]he market will protect consumers from excessive rates while encouraging production of adequate supplies." *Id.* The Commission agreed that "market-based rates" were desirable, but it concluded that the DOJ proposal was "beyond its authority." *Id.* The Commission bluntly conceded that "Congress did not intend to give the Commission authority to deregulate old gas prices completely . . . ." *Id.* Then it went ahead and did just that.

And, what is worse, the Commission deregulated in a way that, by trying to preserve the appearance of a "just and reasonable" ceiling price, directly produced prices for old gas substantially higher than the market. The Commission eliminated all 15 different vintages of old gas that Congress preserved in Section 104 of the NGPA, and it decreed that the new ceiling price for all old gas would be the *highest* ceiling price then in effect for any of the old gas vintages. This price was the ceiling price for the most recent vintage of old gas, and was far above the market price in 1986, when Order No. 451 was issued. It is even farther above the market price today.[5]

The Commission's theory was that, with the ceiling price far above the market price, the market price would in fact prevail, and old gas would be effectively deregulated, or, in the Commission's jargon, "market responsive." 51 Fed. Reg. at 46781, 46792-93. By fixing the ceiling price so high that it would have no effect on trans-

[5] In June 1986, the ceiling price adopted in Order No. 451 was \$2.57 per MMBtu, and the spot market price was approximately \$2.00. 51 Fed. Reg. at 22176. Today, the ceiling price, having been increased monthly for inflation, is \$2.95/MMBtu, 55 Fed. Reg. 18865 (1990), and the spot market price ranges from approximately \$1.09 to 1.61/MMBtu. *See, e.g.*, "Weekly Gas Survey," *Gas Daily*, Eastern Division, Pasha Publications Inc. (May 7, 1990), at 1. Another natural gas industry trade publication estimated the composite spot wellhead price for the week of May 7, 1990 at \$1.38/MMBtu. *See* "Gas Price Report," *Natural Gas Week*, The Oil Daily Co. (May 7, 1990).

actions in the marketplace, the Commission sought to achieve deregulation for an important category of gas that Congress had declined to deregulate in the NGPA. The Commission, and the gas producers that supported its Orders, tried to do by administrative fiat what they could not accomplish in the legislative arena.

The Commission displayed a schizophrenic attitude toward the new price ceiling that it adopted for old gas in Order No. 451. Although, as petitioners stress, the Commission repeatedly paid lip service to the statutory standard by declaring that the new price ceiling was "just and reasonable" within the meaning of the NGA, it simultaneously announced that it did not believe the new ceiling should actually be collected.

The Commission acknowledged that 85 to 90 percent of old gas contracts contained indefinite price escalation clauses (which operated automatically to fix the contract price at the new ceiling price), but at the same time the Commission said that producers with such clauses in their contracts "should not automatically receive the new ceiling price." 51 Fed. Reg. at 22204 n.242. If they did, the Commission warned, "the ceiling price would become a floor and that would distort the market as much as current artificially low ceiling prices." *Id.* at 22204; *see also id.* at 46787 and 46788 n.174 (commenting that automatic collection of the new ceiling price is not "necessarily appropriate" and not "necessarily just and reasonable"). Indeed, the Commission admitted that automatic escalation to the ceiling price "*would not be a just and reasonable result in the sense of providing for the lowest reasonable rate under NGA section 5(a).*" *Id.* at 46788 (emphasis added).

In a cosmetic attempt to address the problems that it itself identified, the Commission established the so-called "good faith negotiation" ("GFN") procedures. These procedures allegedly were designed "to assure that old gas prices are paid at the current market price or the ceiling

price, *whichever is lower* . . . ." 51 Fed. Reg. at 22190 (emphasis in original). In fact, as even the most cursory examination shows, the GFN procedures are a sham and cannot possibly achieve their stated purpose.

Although labelled a "negotiation procedure" and embellished with an elaborate series of negotiating steps (*see* 18 C.F.R. § 270.201 (1989), reprinted in the appendix to the producers' petition, 89-1452 Pet. App. 62a-69a), the GFN process in reality is extremely one-sided, as the court of appeals found. Pet. App. 31a-32a. Only producers can initiate the GFN process. 51 Fed. Reg. at 46789-90. To do so, a producer that is a party to a contract to sell old gas asks the purchaser to "nominate" a price at which the purchaser is willing to continue buying the old gas. If the purchaser "nominates" any price less than the new ceiling price, the producer has the unilateral right to terminate the contract, find a new purchaser for the gas, and obtain automatic abandonment of the sales obligation to the prior purchaser—all with no oversight or review by the Commission under the Natural Gas Act. 51 Fed. Reg. at 22204-05, 46785-86, and 46788.

Order No. 451 makes contract termination an attractive option to producers. For example, contract termination entitles the producer to automatic abandonment of its sales service obligation to the former pipeline purchaser with no prior Commission review or approval under NGA Section 7(b), 15 U.S.C. § 717f(b). It also entitles the producer to a "blanket" sales certificate under Section 7(c) of the NGA, 15 U.S.C. § 717f(c). This relieves the producer from the obligation of obtaining further certificates of public convenience and necessity from the Commission for all subsequent resales of the gas to the interstate market. 51 Fed. Reg. at 22213-14. In addition, the Commission established a "mandatory transportation certificate" procedure that requires prior pipeline purchasers of old gas to transport to new purchasers the very gas "released" by contract termination, *i.e.*, the very gas that the producer has refused to continue selling to

the pipeline because the pipeline has not agreed to pay the new ceiling price set under Order No. 451.[6]

E. The Natural Gas Wellhead Decontrol Act of 1989.

In 1989, three years after the Commission deregulated old gas in Order No. 451, Congress decided to change the pricing policies embodied in the NGPA and to end by no later than January 1, 1993 all federal price regulation of wellhead sales of natural gas. Congress accomplished this by enacting the Natural Gas Wellhead Decontrol Act of 1989, Pub. L. No. 101-60, 103 Stat. 157. Congress thus took the step it had deliberately refused to take in 1978 when it enacted the NGPA: it deregulated old gas.

Under the new statute, price controls on all gas, including all old gas, will be eliminated entirely on January 1, 1993. Private parties, however, can "deregulate" old gas at any time after July 26, 1989, through private negotiation. Such negotiation can occur at any time an existing gas purchase contract expires or is terminated or modified. *See* Section 2(a) of the Act, 103 Stat. 157.

Congress devised procedures permitting deregulation by private negotiation before January 1, 1993 to assist the industry in its transition from NGPA pricing policies to full deregulation of wellhead sales and thus to smooth out the market effects of that transition. The Commission recently adopted final rules to help implement the Wellhead Decontrol Act's transition procedures (*see* 55 Fed. Reg. 17425 (1990)), and producers (including some of the petitioners in this case) already are using these procedures to achieve deregulation in the manner Congress intended.[7]

[6] Since Order No. 451 became effective, most pipelines have become "open access" pipelines. The mandatory transportation certificate procedure therefore is of little practical significance, and petitioners do not seek review of the court of appeals' decision invalidating this procedure.

[7] *See, e.g.*, the excerpt from Securities and Exchange Commission Form 10-K filed in March 1990 on behalf of petitioner Anadarko Petroleum Company, reproduced in Appendix B to this brief.

F. The Impact of Order No. 451.

To put it mildly, the effect of Order No. 451 has been very different from what the Commission claims to have expected when it issued the order. Although the Commission repeatedly touted its action as a measure to benefit consumers (*see, e.g.*, 51 Fed. Reg. at 22195), in fact Order No. 451 has done nothing of the kind. As a result of the order, consumers have been subjected to significant increases in the price of old gas. Between March 1986 and January 1989, the price of old gas increased by 44%, or more than 14 percent annually.[8] This increase has far outstripped the rate of inflation, even though Congress, in the NGPA, expressly indicated its intention that old gas prices generally should be permitted to rise no faster than inflation. During the period from March 1986 to January 1989, inflation was below 4 percent annually.[9]

A study prepared by the Interstate Natural Gas Association of America confirms the fact that Order No. 451 has not helped consumers. The study showed that operation of Order No. 451's GFN procedures resulted in a net gas cost increase of approximately $215 million in 1988 alone.[10]

Significantly, *all* of the old gas covered by Section 104 of the NGPA and now subject to the above-market ceiling price was already in production and dedicated for sale to consumers served by the interstate market before Order No. 451 was issued. Accordingly, there was no basis for the Commission's claim that Order No. 451

[8] *Gas Costs, Resale and Transportation Rates of Pipeline Companies—A Monthly Service*, Foster Associates Inc. (January 25, 1989), Summary Table 4.

[9] Council of Economic Advisors, *Economic Indicators*, "Implicit Price Deflator for Gross National Product" (March 1990).

[10] Interstate Natural Gas Association of America, *The Washington Report*, No. 1450, at 9 (September 29, 1989).

was essential to avoid premature abandonment of low-cost gas supplies. *None* of the interstate sales could have been abandoned unless the Commission affirmatively authorized abandonments pursuant to Section 7(b) of the NGA.

Moreover, to the extent the existing regulated prices might have been thought inadequate and likely to lead in some cases to premature abandonment of old gas, the Commission could have set new ceiling prices targeted to that incremental production. This would have achieved the stated goals of Order No. 451 without the exorbitant cost increases that the Order has imposed on consumers. And, in light of the Wellhead Decontrol Act, even such a more limited measure would have been unnecessary. This is because the Commission itself announced that the majority of the abandonment decisions that it hoped to avoid would not be made until the 1990's. 51 Fed. Reg. at 46775. By that time, the Wellhead Decontrol Act would have provided all the assurance of pricing flexibility that any producer could possibly have needed.

G. The Court of Appeals' Decision.

After the Commission issued its order on rehearing (Order No. 451-A), the gas producers identified a minor aspect of the Commission's action with which they were dissatisfied and sought review in the Fifth Circuit. Respondents sought review in the D.C. Circuit, but their petitions were transferred to the Fifth Circuit, where the producers had already filed.

The court of appeals ruled that Orders No. 451 and No. 451-A exceeded the authority conferred on the Commission by Congress. The court therefore vacated the orders in their entirety. Pet. App. 36a. In the court's view, the Commission "ignored congressional intent and exceeded its authority by allowing for de facto deregulation of old gas." *Id.* at 17a. By maintaining the NGA "just and reasonable" standard for old gas, the court held, Congress intended to maintain regulation and lower prices for old gas and not to permit the price of such gas to be set by the market, with or without an above-market ceiling price. *Id.* at 20a-23a.

Likewise, the court ruled that the Commission "abdicated its responsibility under Section 7(b) of the NGA by providing for an across-the-board, pre-authorized abandonment" of producers' existing service obligations, as part of the GFN procedures adopted in Order No. 451. Pet. App. 28a. Under these procedures, producers may unilaterally terminate their existing old gas contracts whenever a purchaser will not agree to pay the Commission's new above-market ceiling price. The court held that, by deciding in advance to allow, in *every* such situation, abandonment of the very service obligations that the Commission itself has certified as promoting the "public convenience and necessity," the Commission disregarded its proper statutory role. The court relied in part on this Court's decision in *United Gas Pipe Line Co. v. McCombs*, 442 U.S. 529 (1979), which refused to approve a producer's *de facto* control of the abandonment process.

The court of appeals also found it "regrettable and unwarranted" that the Commission chose to issue Order No. 451 without addressing the so-called "take-or-pay" problem. Pet. App. 31a. As the court explained, natural gas markets have suffered serious adverse effects from contracts reached in the 1970's that require purchasers to pay for large quantities of natural gas whether they take that gas or not. *Id.* at 29a-30a. Although the court of appeals did not direct the Commission to take any particular action with respect to the take-or-pay problem, it did find "arbitrary and unsupportable" the Commission's stated rationale for omitting the subject from

Order No. 451. Pet. App. 32a. This was particularly so, the court said, in light of the "one-sided nature of the GFN process," which empowers gas producers to terminate old gas contracts whenever purchasers will not agree to pay the Commission's new above-market ceiling price. *Id.* at 31a.

Judge Brown dissented. Pet. App. 36a-60a. He disagreed with virtually everything the majority said. In particular, he believed that the Commission's authority under the NGPA is broad enough to allow the Commission to adopt a substantially above-market ceiling price and thus effectively to deregulate the price of old gas. *Id.* at 47a-50a. Judge Brown also thought that the Commission's pre-granted abandonment—which he found to be "at the heart of the goals of Order No. 451"—was consistent with the requirements of Section 7(b) of the NGA. *Id.* at 52a-55a.

The Commission and the producers petitioned for rehearing and suggested rehearing en banc. The court of appeals denied the petition, and no judge of the court called for a vote on the suggestion of rehearing en banc. Pet. App. 62a.

ARGUMENT

Review by this Court is not warranted. The court of appeals' decision is correct, and the statutory provisions involved have been repealed. There is no conflict among the circuits, and no conflict can arise in the future. By January 1, 1993, the Wellhead Decontrol Act will eliminate all price regulation for wellhead sales of natural gas. Under the transition procedures established in that Act, the shift to deregulation has already begun. On January 1, 1993, the repeal of Title I of the NGPA, including Sections 104 and 106, will become effective, and the Commission will have no further authority to issue price ceiling orders under the NGPA. Its deregulation objectives will be accomplished by statute in the manner prescribed by Congress. The court of appeals' decision therefore lacks any long-term significance.

Moreover, review of the court of appeals' ruling is not needed to preserve any benefits for consumers. As we have already shown (see pages 13-14, *supra*), Order No. 451 has created significantly higher prices for old gas. The Order has benefited only gas producers, not users of natural gas, as the alignment of parties here plainly shows.[11]

Petitioners' prophecies of market disruption in the event the court of appeals' ruling is left undisturbed are not persuasive. In the first place, the premise that any such disruption will occur is problematical at best. The government and the producers present widely divergent estimates of the number of contracts that have been renegotiated under Order No. 451 (*contrast* 89-1452 Pet. 3, 13, 26-27 *with* 89-1453 Pet. 16), and they do so without any citation and without any indication of what percentage of currently flowing gas is covered by the contracts involved.

More important, Order No. 451 has been under attack from the outset, and all affected participants in the industry have been aware of the Order's doubtful legal

[11] In addition to the petitioner gas producers, three so-called "industrial user groups," respondents in this Court, also support the Commission's Orders. These groups, which consist of large industrial consumers of natural gas such as steel and aluminum companies and glass manufacturers, support Order No. 451 because the Order allows low-cost old gas supplies to be diverted from the interstate market and made available for direct sale to, and consumption by, large industrial users. The participation of such users here demonstrates that the effect of the Commission's action has been to transfer much of the economic benefit of old gas from the interstate market generally (including residential users) to a single favored segment of manufacturers. Thus, an Order that the Commission has attempted to defend as a measure to rationalize the natural gas market has in fact promoted concentration of the economic benefits of old gas in the hands of a relatively few large corporate users whose superior economic bargaining power has enabled them to capture old gas supplies that properly should serve the nation as a whole.

status. The producers should not be heard to complain now if they failed to plan for the possibility that the Order would be vacated. *See, e.g., Callery Properties, Inc. v. FPC*, 335 F.2d 1004, 1018 (5th Cir. 1964) (holding in a comparable situation some years earlier that "[t]he risk inherent in making deliveries pending final judicial determination was obvious to the producers"), *rev'd on other grounds*, 382 U.S. 223 (1965).

Several respondents, in fact, moved for a stay of the Order's effectiveness pending judicial review. The Commission denied that relief, saying that any problems that the Order might create could be rectified through "money adjustments" if the Order were invalidated. 51 Fed. Reg. at 46817 n.388 (1986). Similarly, when one of the respondents (supported by several others) asked the Eighth Circuit to stay the Commission's action, the court declined, basing its decision on a finding that "the normal administrative and judicial review processes will adequately protect [respondent's] interests, and are capable of providing [respondent] any relief to which it may ultimately be entitled." *In re KN Energy, Inc.*, No. 86-1806 (8th Cir. 1986), reprinted as Appendix C, *infra*, at 16a.

Against this background, petitioners cannot convincingly claim that review by this Court is needed to avoid the practical problems that Order No. 451's invalidation allegedly will cause. The private negotiation procedure established by Congress in the Wellhead Decontrol Act is available to ameliorate any difficulties that may arise in connection with contracts that have been renegotiated under Order No. 451, and indeed some of the producer-petitioners already have begun to use these procedures (*see* page 12 and n.7, *supra*). If Order No. 451 were to continue in effect, it would only serve to frustrate and impede the transitional process that Congress created.[12]

[12] Producers, of course, have a strong incentive to prefer the Order No. 451 "negotiating" process over the negotiating process Congress created in the Wellhead Decontrol Act. The "negotiating" procedures of Order No. 451, as the court of appeals found, are one-sided and overwhelmingly favor producers.

In any event, it really is no argument to say that the Commission has made a blunder so large that no court should be allowed to correct it. Here, the Commission issued orders, with the full support and encouragement of the producers, that were a conscious attempt to circumvent the congressional decision in the NGPA to retain meaningful price regulation for old gas. Having affirmatively sought the Commission's action, the producers properly can be asked to bear the burdens of undoing it. As the court of appeals recognized, an agency's deliberate departure from a statutory command should be overturned, even if some economic disruption is caused. Pet. App. 36a.

On the merits, the court of appeals reached the only result consistent with the statutory compromise in the NGPA. The "just and reasonable" standard that Congress borrowed from the NGA and incorporated into the NGPA was familiar statutory language that carried with it a regulatory scheme well-known to Congress, the Commission, and the industry. When Congress provided, in Sections 104(b)(2) and 106(c) of the NGPA, that the Commission's power to prescribe new maximum ceiling prices for old gas was limited by the NGA "just and reasonable" standard, Congress evidenced its intention *not* to deregulate old gas prices, directly or indirectly. The Commission's stratagem of fixing a ceiling price far above the market price in an effort to allow the market to determine old gas prices cannot be squared with Congress' undisputed intent to continue price regulation for old gas.

As early as 1974, four years before Congress enacted the NGPA, this Court held in *FPC v. Texaco, Inc., supra*, 417 U.S. at 397, that "the prevailing price in the market place cannot be the final measure of 'just and reason-

able' rates mandated by the [NGA]." Congress retained the "just and reasonable" standard for old gas prices against the background of that ruling. The Commission itself admitted in Order No. 451 that it lacked authority simply to declare all prices just and reasonable and let the market govern. 51 Fed. Reg. at 22211. The court of appeals properly concluded that Order No. 451 was not materially different from what the Commission acknowledged it could not do and that the Order therefore was unlawful.

The court of appeals' ruling was thus based not only on the text of Sections 104(b)(2) and 106(c) but also on the structure of the NGPA compromise, the place of old gas regulation within that structure, and the contrast between Congress' treatment of old gas and its treatment of the various categories of gas that it did decide to deregulate. The legislative history cited by the court of appeals merely confirmed the conclusion that the court drew from the face of the statute itself. Although petitioners now attempt to characterize that legislative history as nothing more than "isolated statements by individual legislators" (89-1452 Pet. 14; *see also* 89-1453 Pet. 12), the Commission cited much of the same legislative history to this Court in *Mid-Louisiana*, when it was in the Commission's interest to explain why Congress chose to treat old gas as it did in the NGPA. Brief for the Federal Energy Regulatory Commission at 31-32 (Nos. 81-1889 *et al.*).

Petitioners' reliance on *Chevron U.S.A. Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984), is misplaced. Congress has "directly spoken to the precise question at issue here"—twice. In 1978, in the NGPA, Congress decided that old gas prices should not be decontrolled; in 1989, in the Wellhead Decontrol Act, Congress decided that they should be. The Commission was not free to change Congress' decision in the meantime. Certainly, nothing in *Chevron* gave the Commission that authority, which perhaps explains why none of the petitioners saw fit even to cite *Chevron* in their briefs in the court of appeals.

I. THE COURT OF APPEALS CORRECTLY REJECTED THE COMMISSION'S *DE FACTO* DEREGULATION OF OLD GAS.

The court of appeals did not hold, as petitioners contend, that "the Commission is without authority under Sections 104(b)(2) and 106(c) to increase prices of old gas . . . ." 89-1453 Pet. 15. On the contrary, the court expressly stated that "sections 104(b)(2) and 106(c) *do* vest the Commission with the authority to raise the NGPA's ceiling prices in accordance with the "just and reasonable" standards of the NGA . . . ." Pet. App. 22a (emphasis added). The court added, however, that "this authority does not translate into unfettered discretion." *Id.*

Similarly, the court of appeals' decision does not depend primarily on the elimination of vintaging, as petitioners try to suggest (89-1453 Pet. 15; 89-1452 Pet. 14). Rather, the court of appeals focused its attention on precisely the right issue: whether Order No. 451's new ceiling price comports with the "just and reasonable" standard that Congress incorporated into the NGPA for old gas.

The court held that it does not, relying on the Commission's own statements (Pet. App. 11a-13a and n.15):

1. that the so-called "replacement cost" methodology purportedly used to set the new ceiling price was intended to reflect the "prices [that] would be established if deregulation of old gas were to occur" (51 Fed. Reg. at 22187);
2. that the Commission had never before used a replacement cost methodology to fix the ceiling price of old gas;
3. that the Order No. 451 ceiling price greatly exceeded the competitive market price;

4. that actual collection of the new ceiling price "would yield unjust and unreasonable prices" (Pet. App. 13a); and
5. that the Commission was depending on market forces to "reduce the actual price paid for old gas to levels consistent with the NGA's consumer protection mandate" (Pet. App. 11a).

Taking the Commission at its word on these points, the court concluded that Order No. 451 was intended to operate, and in fact would operate, to deregulate old gas and that it therefore exceeded the Commission's authority under the NGPA. Pet. App. 17a.[13]

Both petitions try to evade the real basis for the court's decision by burying it in a footnote (89-1453 Pet. at 22 n.9; 89-1452 Pet. at 19 n.11). But this tactic cannot change the court's reasoning. The court addressed what the Commission actually did, not the Commission's self-serving assurances that everything was "just and reasonable." Moreover, by holding that the Commission's deregulation was inconsistent with the regulatory standard incorporated in the NGPA, the court necessarily found that Order No. 451 was not "just and reasonable" within the meaning of the NGPA. Petitioners' attempt to pretend that the court left intact the Commission's purported "just and reasonable" findings (*see* 89-1453 Pet. 11, 17; 89-1452 Pet. 13) cannot survive comparison with what the court actually held.

[13] The court's conclusion about the Commission's *de facto* deregulation of old gas would have been justified by Order No. 451's ceiling price provision alone. When one also considers the pre-granted abandonment and blanket certificate procedures, and the elimination of all rate filing requirements for gas that has been "released" under the GFN procedures, 51 Fed. Reg. at 22209-22210, there can be no doubt of the deregulatory purpose and effect of the Commission's action. By virtue of Order No. 451, producers of old gas can escape *every* aspect of NGA jurisdiction, in direct contravention of the plain language of the NGPA. *See* Sections 104, 106, and 601(a), 15 U.S.C. §§ 3314, 3316, and 3431(a).

This Court's most recent decision involving the NGPA, *FERC v. Martin Exploration Management Co.*, 486 U.S. 204 (1988), provides strong support for the court of appeals' decision. *Martin* concerned the proper interpretation of Section 101(b)(5) of the NGPA, 15 U.S.C. § 3311(b), which deals with gas that "qualifies under more than one provision . . . providing for any maximum lawful price or for any exemption from such a price . . . ." In such situations, Section 101(b)(5) makes applicable "the provision which could result in the highest price . . . ."

The controversy in the case arose because many producers who had gas that qualified for both regulation and deregulation also had long-term contracts that priced regulated gas at or near the applicable price ceiling and deregulated gas on the basis of either the market price or renegotiation between the parties. In the 1980's, when the market price dropped substantially below the NGPA price ceilings, producers with gas that qualified as both regulated and deregulated argued that Section 101(b)(5) permitted them to treat the gas as regulated and thus to obtain the higher price that regulated gas would bring under their contracts.

The Commission, however, promulgated a regulation that interpreted Section 101(b)(5) to mean that "any gas that was qualified for both deregulated and regulated treatment would be treated as deregulated." 486 U.S. at 208. Numerous producers attacked the regulation as an incorrect interpretation of the statute. This Court upheld the Commission's position. *Id.* at 209-211.

The Court explained that the producers' reading of Section 101(b)(5) would have the effect of "turning a statutory scheme of price ceilings and deregulation into a system of price supports for producers." 486 U.S. at 210. The Court ruled that Congress did not intend "to create such a producer-assistance program." *Id.* Congress' "operating assumption", in the Court's view, was

that "deregulation was the most favorable regime for gas producers . . . ." *Id.* at 211. In fact, the Court said, "[n]ot one participant in the legislative process suggested that producers should receive higher prices than deregulation would afford them." *Id.* at 210.

Order No. 451 achieves for *regulated* low-cost old gas essentially the same "system of price supports for producers" that this Court rejected for *deregulated* gas in *Martin*. The Order allows producers to demand that purchasers with existing contracts pay the above-market ceiling price for old gas. If the purchasers agree (which many of them have, for a variety of different economic reasons), the producer obtains the above-market price. If the purchasers refuse, the producer is authorized to terminate the contract and sell the gas to another purchaser at the prevailing market price. The producer thus gets either the market price or the higher ceiling price fixed under Order No. 451. This is precisely the kind of "better than deregulated" position that the Court rejected in *Martin*. The court of appeals' decision invalidating Order No. 451 thus accords with this Court's prior rulings and presents no novel issue warranting further review.

The mere fact that the Commission included some ceiling price in Order No. 451 does not mean that the Order comports with the NGPA requirement that the ceiling price be "just and reasonable." A ceiling price of $100 a pound obviously imposes no regulatory constraint on the price of apples. Similarly, the ceiling price adopted in Order No. 451 is far above the market price and does not impose a regulatory constraint on the price of old gas. That is why the Department of Energy ("DOE") recently has confirmed that under Order No. 451 old gas is "effectively decontrolled." DOE's Energy Information Administration chose that phrase to refer to gas categories for which the price ceiling has been set well above the market price—exactly what the Commission did in

Order No. 451. *See* J. Tobin and W. Trapman, *Natural Gas Wellhead Decontrol Act of 1989*, Natural Gas Monthly (Nov. 1989), at 8-10 and n.12. This effective deregulation is not what Congress had in mind when it incorporated the "just and reasonable" rate standard in the NGPA. In fact, as we have shown, the regime created by Order No. 451 has frequently resulted in above-market prices for producers, thus granting the producers even more than they would have received under actual deregulation. The Court condemned this kind of windfall in *Martin*, and it was correctly repudiated by the court of appeals here as well.

II. THE COURT OF APPEALS CORRECTLY HELD THAT THE COMMISSION'S PRE-GRANTED ABANDONMENT VIOLATED SECTION 7(b) OF THE NATURAL GAS ACT.

The court of appeals did not err, as petitioners claim, in rejecting the automatic abandonment procedures created by Order No. 451. The court properly relied on the clear language of NGA Section 7(b), and it reached its decision only after it considered and evaluated the intended operation of the GFN process. The court then found that the "pre-grant of abandonment runs contrary to the instruction of [this Court] in *United Gas Pipeline Co. v. McCombs*," 442 U.S. 529 (1979), largely because "[t]he absence of provisions for factual inquiry into the circumstances of an abandonment allows for the 'abandonment determination [to] rest, as a practical matter, in the producer's control . . . .'" Pet. App. 27a, 28a, quoting *McCombs*, *supra*, 441 U.S. at 539. The court observed that the natural consequence of an abandonment procedure that is "altogether in the producer's control" and that can be "implemented only at the behest of the producer" is that the procedure will be used "only when such utilization would serve the producer's economic

interest." Pet. App. 28a. This was the very result that the Court found unacceptable in *McCombs*.[14]

There is no merit to petitioners' claim that the Commission satisfied the Section 7(b) hearing requirement through the "hearing" held in connection with the Order No. 451 rulemaking proceedings. Congress' decision to require "due hearing" prior to any abandonment of federally regulated gas sales service imposed an affirmative regulatory responsibility on the Commission. The Commission cannot meet that responsibility simply by surrendering it to one group of parties (*e.g.*, producers) whose actions are guided by economic self-interest. Congress intended the Commission to protect the public interest, not merely to declare victory and leave the arena.

That is why this Court made clear in *McCombs* that the "due hearing" required in Section 7(b) "permits all interested parties to be heard and therefore facilitates full presentation of the facts necessary to determine whether § 7(b)'s criteria have been met." 442 U.S. at 538. The hearing must not deal with only "a hypothetical set of facts . . . ." *Id.* at 540. But the Commission's alleged consideration of the public interest and its decision *always* to pre-grant abandonment for sales of old gas occurred before Order No. 451 even became effective and thus well before *any* concrete proposal for abandonment was presented. The Order No. 451 "hearing", therefore, did not provide, and could not have provided, opposing parties with a meaningful opportunity to be heard.

[14] Neither petition seriously contests the court of appeals' finding that the GFN process effectively vested control of abandonments in the hands of the producer. Moreover, Order No. 451 has not worked, as the Commission promised, to produce the *lower* of the market or ceiling price. In some instances, pipelines have offered the producer a market price, only to have the producer exercise contract termination rights under the GFN procedures and abandon service over the pipeline's objection. *See, e.g.*, the exchange of correspondence between petitioner Mobil Natural Gas, Inc. and respondent Williams Natural Gas Co., reproduced in Appendix D, *infra*.

The court of appeals' holding also is consistent with this Court's decision in *FPC v. Moss*, 424 U.S. 494 (1976). The pre-granted abandonment procedure approved in *Moss* merely allowed a producer to submit an NGA certificate application for a specific transaction and, *at the same time*, to seek and provide justification for pre-granted abandonment. *See id.* at 498. But the *Moss* pre-granted abandonment procedure was not automatic; it could be "exercised only upon appropriate findings by the [Federal Power Commission] of public convenience or necessity . . . ." *Id.* at 498-499. Thus, unlike Order No. 451, the *Moss* pre-granted abandonment procedure required the Commission actually to make findings on specific transactions and to provide affected parties with the right to an individual hearing, where appropriate.

Petitioners are clearly wrong in asserting that the court of appeals' holding on the abandonment issue conflicts with the decisions in *Associated Gas Distributors v. FERC*, 824 F.2d 981 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988), and *Kansas Power & Light Company v. FERC*, 851 F.2d 1479 (D.C. Cir. 1988). In *Associated Gas Distributors*, the D.C. Circuit approved a pre-granted abandonment procedure in situations where the *purchaser* elected to reduce service, thereby agreeing to the abandonment. In contrast, the plain terms of Order No. 451 allow abandonment over the *objection* of the purchaser. In *Kansas Power & Light*, the Commission provided an opportunity to challenge the proposed abandonments based on the specific proposals set forth in the abandonment applications. 851 F.2d at 1482-1483. Neither case presented the abandonment issue raised by Order No. 451: whether abandonment of service can be permitted without any "due hearing" or any examination of the facts and circumstances of a particular proposal.

The court of appeals' decision on the abandonment issue is correct and does not warrant review here.

III. THE COURT OF APPEALS' COMMENTS ON THE TAKE-OR-PAY ISSUE WERE PROPER AND DO NOT PRESENT ANY QUESTION SUITABLE FOR REVIEW.

Petitioners' position on the take-or-pay issue fundamentally misstates the holding of the court of appeals. Contrary to their claim (89-1453 Pet. 25-26; 89-1452 Pet. 23-26), the court of appeals did not require the Commission to "resolve" the take-or-pay problem. Having already ruled that Order No. 451 was invalid because of its pricing and abandonment provisions, the court merely said that the Commission's failure to address the take-or-pay problem was "regrettable and unwarranted." Pet. App. 31a. The court also expressed its view that the Commission's rationale for its inaction was "arbitrary and unsupportable." *Id.* at 32a. But the court did not direct the Commission to do anything, and petitioners' attempt to create a contrary impression is not supported by the court's opinion.

The court of appeals' dissatisfaction with the Commission's "head in the sand" attitude toward the take-or-pay problem was entirely justified. The Commission declared in Order No. 451 that the competitive market would, in some undisclosed way, resolve the problem of high-cost, take-or-pay contracts. 51 Fed. Reg. at 22183. As the court observed, however, this sort of wishful thinking had already been rejected by the D.C. Circuit in *Associated Gas Distributors*, *supra*, 824 F.2d at 1023, "because it failed to effectively address the take or pay problem." Pet. App. 30a. The court of appeals here simply noted its agreement with the holding in *Associated Gas Distributors.*

The court of appeals also found that, because of the one-sided nature of the GFN process, producers would not initiate that process "if by so doing, they ran the risk of giving up more on new gas contracts than they would receive in return for their old gas." Pet. App. 32a.

For this reason, the court concluded that "the prospect for exacerbating the take or pay problem runs rampant throughout the provisions of Order No. 451." *Id.*

Petitioners do not dispute the court's assessment of the likely effect of Order No. 451. Instead, they seek to deflect this Court's attention from what the court of appeals actually said by arguing that an agency "has exceedingly broad discretion to determine the proper ordering of its regulatory priorities . . . ." 89-1453 Pet. 25; *see also* 89-1452 Pet. 24. The argument misses the point. The court of appeals found that Order No. 451 itself, particularly the GFN procedures, would exacerbate the take-or-pay problem. The court commented not on the Commission's "ordering of its regulatory priorities," but on the reasonableness of the action taken in Order No. 451.

In any event, the important consideration here is that the court of appeals did not order the Commission to do anything with respect to the take-or-pay issue, and this portion of the court's opinion therefore presents no practical question suitable for this Court's review. This Court does not grant certiorari merely to evaluate the wisdom of statements in court of appeals opinions.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted,

C. WILLIAM COOPER
UNITED DISTRIBUTION COMPANIES
203 Pittsburgh National Bank Building
P.O. Box 562
Sewickley, PA 15143
(412) 741-4836

ROBERTA LEE HALLADAY *
PETER BUSCEMI
MORGAN, LEWIS & BOCKIUS
1800 M Street, N.W.
Washington, D.C. 20036
(202) 467-7000
Counsel for United Distribution Companies

May 14, 1990

* *Counsel of Record*

(Additional counsel listed on next page)

MICHAEL E. SMALL
WRIGHT & TALISMAN, P.C.
1050 17th Street, NW
Washington, D.C. 20036

LEWIS A. POSEKANY, JR.
General Counsel
WILLIAM G. VON GLAHN
Associate General Counsel
THE WILLIAMS COMPANIES
JOHN CARY
Assistant General Counsel
Williams Natural Gas Company
P.O. Box 2400
Tulsa, Oklahoma 74102
Attorneys for
The Williams Companies and Williams Natural Gas Company

MARY ANN WALKER
PEPPER, HAMILTON & SCHEETZ
1300 Nineteenth Street, NW
Washington, D.C. 20036

ARNOLD R. MADIGAN
Vice President
KN ENERGY, INC.
P.O. Box 15265
Lakewood, Colorado 80215
Attorneys for
KN Energy, Inc.

WILLIAM T. MILLER
SUSAN N. KELLY
MILLER, BALIS & O'NEIL, P.C.
1101 14th Street, NW
Suite 1400
Washington, D.C. 20005
Attorneys for
American Public Gas Association

FREDERICK MORING
CROWELL & MORING
1001 Pennsylvania Avenue, NW
11th Floor
Washington, D.C. 20004-2505
Attorney for
Associated Gas Distributors

EDWIN S. ROTHSCHILD
Assistant Director
CITIZEN ACTION
1300 Connecticut Avenue, NW
Suite 401
Washington, D.C. 20036
Pro se for Citizen Action

JOHN T. MILLER, JR.
LAW FIRM
1001 Connecticut Avenue, NW
Washington, D.C. 20036
Attorney for
Elizabethtown Gas Company

JOHN K. ROSENBERG
MARTIN J. BREGMAN
THE KANSAS POWER AND LIGHT COMPANY
P.O. Box 889
Topeka, Kansas 66601

WILLIAM I. HARKAWAY
HARVEY L. REITER
MCCARTHY, SWEENEY & HARKAWAY
1750 Pennsylvania Avenue, NW
Suite 1105
Washington, D.C. 20006
Attorneys for
The Kansas Power and Light Company

KENNETH J. NEISES
LACLEDE GAS COMPANY
720 Olive Street
Suite 1512
St. Louis, MO 63101
Attorney for
Laclede Gas Company

JOHN M. GLYNN
MARYLAND PEOPLE'S COUNSEL
PAUL S. BUCKLEY
Assistant People's Counsel
American Building, 9th Floor
231 East Baltimore Street
Baltimore, MD 21202
Attorneys for
Maryland Office of People's Counsel

FRANK J. KELLEY
Attorney General
THOMAS L. CASEY
Assistant Solicitor General
DON L. KESKEY
HENRY J. BOYTON
Assistant Attorneys General
1000 Long Boulevard, Suite 11
Lansing, Michigan 48911

RONALD D. EASTMAN
Special Assistant Attorney General
LYNDA MOUNTS
CADWALADER, WICKERSHAM & TAFT
1333 New Hampshire Ave., NW
Suite 700
Washington, D.C. 20036
Counsel for
State of Michigan and the Michigan Public Service Commission

RICHARD A. SOLOMON
WILNER & SCHEINER
Suite 300
1200 New Hampshire Ave., NW
Washington, D.C. 20036
Attorney for
Midwest Energy, Inc.

SCOTT WILENSKY
Special Assistant Attorney General
1100 Bremer Tower
7th Place at Minnesota Street
St. Paul, MN 55101
Attorney for
The Minnesota Department of Public Service

ERIC A. EISEN
BIRCH, HORTON, BITTNER, PESTINGER & ANDERSON
1155 Connecticut Avenue, NW
Suite 1200
Washington, D.C. 20036
Attorney for
Missouri Public Service Commission

MARGARET ANN SAMUELS
Chairman, Gas Committee
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
Office of the Consumers' Counsel
137 East State Street
Columbus, Ohio 43266-0550
Attorney for
National Association of State Utility Consumer Advocates

WILLIAM A. SPRATLEY
Ohio Consumers' Counsel
MARGARET ANN SAMUELS
Associate Consumers' Counsel
EVELYN R. ROBINSON
Associate Consumers' Counsel,
Office of the Consumers' Counsel
137 East State Street
Columbus, Ohio 43266-0550
Attorneys for
Ohio Office of Consumers' Counsel

MEREK E. LIPSON
PATRICK G. GOLDEN
LYNDSEY HOW-DOWNING
PACIFIC GAS & ELECTRIC COMPANY
77 Beale Street
San Francisco, CA 94120
Attorneys for
Pacific Gas & Electric Company

DAVID M. BARASCH
PENNSYLVANIA CONSUMER ADVOCATE
CRAIG R. BURGRAFF
PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE
1425 Strawberry Square
Harrisburg, PA 17120
Attorneys for
Pennsylvania Office of Consumer Advocate

THOMAS M. PATRICK
KAREN HILL
THE PEOPLES GAS LIGHT & COKE COMPANY
Suite 320
122 S Michigan Avenue
Chicago, IL 60603
Attorneys for
The Peoples Gas Light & Coke Company and North Shore Gas Company

JANICE E. KERR
MICHAEL B. DAY
EDWARD W. O'NEILL
THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
Legal Division
505 Van Ness Avenue
San Francisco, California 94102
Attorneys for
The Public Utilities Commission of the State of California

HOWARD DAVENPORT
THOMAS E. REDMOND
THE PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
450 Fifth Street, NW
Washington, D.C. 20001
Attorney for
The Public Service Commission of the District of Columbia

RICHARD A. SOLOMON
DAVID D'ALESSANDRO
WILNER & SCHEINER
Suite 300
1200 New Hampshire Ave., NW
Washington, D.C. 20036
Attorneys for
The Public Service Commission of the State of New York

DAVID L. HUARD
SOUTHERN CALIFORNIA GAS COMPANY
801 South Grand Avenue
Los Angeles, California 90017-0992
Attorney for
Southern California Gas Company

MORTON L. SIMONS
SIMONS & SIMONS
5025 Linnean Ave., NW
Washington, D.C. 20008
Attorney for
United Cities Gas Company

APPENDICES

APPENDIX A

LIST OF RESPONDENTS AND RESPONDENTS' PUBLICLY TRADED PARENTS AND SUBSIDIARIES

AMERICAN PUBLIC GAS ASSOCIATION ("APGA")

ASSOCIATED GAS DISTRIBUTORS ("AGD")

AGD member companies:

Atlanta Gas Light Company

Subsidiaries:

Georgia Gas Company
Georgia Engine Sales & Service
Trustees Investments, Inc.
Georgia Natural Gas Company
Georgia Gas Service Company
Georgia Energy Company

Baltimore Gas & Electric Company

Subsidiaries:

BNG, Inc.
Constellation Holdings, Inc.

Constellation Development, Inc.
Constellation Investments, Inc.
Constellation Operating Services, Inc.
Constellation Real Estate Group, Inc.
Constellation Water Systems, Inc.

Affiliate:

Safe Harbor Water Power Corporation

Bay State Gas Company

Subsidiaries:

Bay State Exploration, Inc.
Bay State Gas Supply, Inc.

Northern Utilities, Inc.
Granite State Gas Transmission, Inc.

The Berkshire Gas Company
Boston Gas Company

Parent: Eastern Gas and Fuel Associates

The Brooklyn Union Gas Company

Subsidiaries:

Fuel Resources, Inc.
Fuel Resources Gathering, Inc.
Brooklyn Union Exploration Company, Inc.
Gas Energy, Inc.
Methane Development Corporation
Collectaccount Services, Inc.
Star Enterprises, Inc.
Delaware Valley Propane Company

Central Hudson Gas & Electric Corporation

Subsidiaries:

Central Hudson Enterprises Corp.
Central Hudson Cogeneration, Inc.
CH Resources, Inc.
Greene Point Development Corp.
Phoenix Development Co., Inc.

Chesapeake Utilities Corporation

Subsidiaries:

Central Florida Gas Co.
Eastern Shore Natural Gas Co.
Dover Exploration Co.

Skipjack, Inc.
Sharpgas, Inc.

City of Holyoke, Mass., Gas & Electric Department
City of Norwich, Department of Public Utilities
City of Westfield Gas & Electric Light Department

Colonial Gas Company

Subsidiary: Transgas, Inc.

Commonwealth Gas Co.

Parent: Commonwealth Energy System

Concord Natural Gas Corporation

Subsidiary: Concord Gas Service Corp.

Consolidated Edison Company of New York, Inc.
Delmarva Power & Light Company

Subsidiaries:

Delmarva Energy Company
Delmarva Industries, Inc.
Delmarva Capital Investments, Inc.

DCI I, Inc.
DCI II, Inc.

Elizabethtown Gas Company

Parent: NUI Corporation

EnergyNorth, Inc.

Subsidiaries:

EnergyNorth Realty, Inc.
Gas Service, Inc.

Energy Resources Corp.

Manchester Gas Co.
Concord Natural Gas Corp.
Concord Gas Service Corp.
Rent-A-Space of New England, Inc.

Essex County Gas Company
Fitchburg Gas & Electric Light Company

Subsidiary: Fitchburg Energy Development Co.

New Jersey Natural Gas Company

Parent: New Jersey Resources Corporation

North Carolina Natural Gas Corporation

Subsidiaries:

NCNG Exploration Corp.
Cape Fear Energy Corp.

Northern Utilities, Inc. (see Bay State Gas Company)
Pennsylvania Gas & Water Company

Parent: Pennsylvania Enterprises, Inc.

Pequot Gas Co.
Philadelphia Electric Company

Subsidiaries:

Adwin Equipment Company
Adwin Realty Company
Conowingo Power Company
Eastern Pennsylvania Development Company
Eastern Pennsylvania Exploration Company
Philadelphia Electric Power Company
The Susquehanna Electric Company
The Susquehanna Power Company

Philadelphia Gas Works
Providence Gas Company

Parent: Providence Energy Corporation

Public Service Company of North Carolina, Inc.

Subsidiaries:

PSNC Natural Resources Corporation

Tar Heel Energy Corp.
PSNC Production Corp.
PSNC Exploration Corp.
PSNC Propane Corp.

Public Service Electric & Gas Company

Subsidiaries:

Energy Pipeline Corporation
Energy Terminal Services Corporation

Mulberry Street Urban Renewal Corporation
PSE&G Overseas Finance N.V.
PSE&G Research Corporation
Public Services Resources Corp.
Community Energy Alternatives, Inc.
Energy Development Corporation

Gasdel Pipeline System, Inc.

South County Gas Co.
South Jersey Gas Co.

Parent: South Jersey Industries, Inc.

The Southern Connecticut Gas Co.

Parent: Connecticut Energy Corp.

UGI Corporation

Subsidiaries:

AmeriGas, Inc.

AP Propane
AmeriGas II, Inc.
Schwartz Carbonic Company
Industrial Gases, Inc.
Picar, Inc.
AmeriLease, Inc.
ANSUTECH, Inc.
Matheson Gas Products, Inc.
Matheson Gas Products Canada, Inc.

UGI Development Company

Ashtola Production Company
International Petroleum Service Company

Keystone Oilfield Supply Co.
Stimwell Services Company
B&L Services Company

Universal Well Services, Inc.

Target Cementing Co.
UGID Holding Company

Triad Drilling Company
Union Supply Company
Wellhead Compressor Packagers Company
Wellhead Finance Co.

Cryotex, Inc.
Heavy Media, Inc.
Four Flags Drilling Company, Inc.

Tri-Four, Inc.

UGID Drilling Company
UGID Drilling Investing Company
UGI Ethanol Development Corporation
SAM's Well Service, Inc.
Development Leasing Corporation
Physicians Technology Corporation
Capital Housing, Inc.
Skyten Corporation
UGI Realty Company
UGI Finance N.V.

Valley Gas Co.

Parent: Valley Resources, Inc.

Washington Gas Light Co.

Subsidiaries:

Crab Run Gas Co.
Davenport Insulation, Inc.
Frederick Gas Co., Inc.
Hampshire Gas Co.
Shenandoah Gas Co.
Brandywood Estates, Inc.

Washington Gas Approved Services, Inc.

Rock Creek Properties, Inc.
Utilitrol

Yankee Gas Services Company

CITIZEN ACTION

Citizen Action is a group of 2 million citizens. None of the members of Citizen Action are corporations or other privately held entities with publicly-traded stocks.

ELIZABETHTOWN GAS COMPANY

Parent: NUI Corporation

THE KANSAS POWER AND LIGHT COMPANY

KN ENERGY, INC.

LACLEDE GAS COMPANY

MARYLAND PEOPLE'S COUNSEL

Maryland People's Counsel ("MPC") is the statutory representative of residential and other noncommercial users of regulated public utility service, including natural gas, in the State of Maryland.

STATE OF MICHIGAN

MICHIGAN PUBLIC SERVICE COMMISSION

MIDWEST ENERGY, INC.

THE MINNESOTA DEPARTMENT OF PUBLIC SERVICE

MISSOURI PUBLIC SERVICE COMMISSION

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES ("NASUCA")

Members of NASUCA are the official state representatives of residential, and in some instances, commercial, consumers of natural gas in 41 states.

NORTH SHORE GAS COMPANY

Parent: Peoples Energy Corporation

OHIO OFFICE OF CONSUMERS' COUNSEL

Ohio Office of Consumers' Counsel is the statutory representative of residential and other noncommercial users of regulated public utility service, including natural gas, in the State of Ohio.

PACIFIC GAS AND ELECTRIC COMPANY

Subsidiaries or affiliates:

Alberta Natural Gas Company Ltd.
ANG Liquids Ltd.
ANGUS Chemical Company
ANGUS Chemie GmbH
ANGUS Fine Chemicals Ltd.
CanStates Energy Inc.
CanStates Holdings Inc.
Foothills Pipe Lines (South B.C.) Ltd.
Magnesium Company of Canada, Ltd.
Rankin Petroleum Inc.
Standard Pacific Gas Line Incorporated

PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE

Pennsylvania Office of Consumer Advocate is the statutory representative of residential and other noncommercial users of regulated public utility service, including natural gas, in the State of Pennsylvania.

THE PEOPLES GAS LIGHT & COKE COMPANY

Parent: Peoples Energy Corporation

THE PUBLIC SERVICE COMMISSION OF THE STATE OF CALIFORNIA

THE PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK

SOUTHERN CALIFORNIA GAS COMPANY

Parent: Pacific Enterprises

UNITED CITIES GAS COMPANY

(Successor to Union Gas System, Inc.)

UNITED DISTRIBUTION COMPANIES ("UDC")

UDC member companies:
Battle Creek Gas Company

Parent: Southeastern Michigan Gas Enterprises, Inc.

Central Illinois Light Company

Parent: CILCORP Inc.

Central Illinois Public Service
Citizen Gas Fuel Company
Columbia Gas System, Inc.

A registered holding company under the Public Utility Holding Company Act.

Subsidiaries:

Columbia Gas of Kentucky
Columbia Gas of Maryland
Columbia Gas of New York
Columbia Gas of Ohio
Columbia Gas of Pennsylvania
Commonwealth Gas Services, Inc.

The Dayton Power and Light Company

Parent: DPL, Inc.

The East Ohio Gas Company

Parent: Consolidated Natural Gas Company

Equitable Gas Company

A division of Equitable Resources, Inc.

Hope Gas, Inc.

Parent: Consolidated Natural Gas Company

Illinois Power Company
Indiana Gas Company

Parent: Indiana Energy, Inc.

Kokomo Gas and Fuel Company
Michigan Consolidated Gas Company

Parent: MCN Corporation

Michigan Gas Company

Parent: Southeastern Michigan Gas Enterprises, Inc.

Michigan Gas Utilities

Division of UtiliCorp United Inc.

National Fuel Gas Distribution Corporation

Parent:

National Fuel Gas Company, a public utility holding company

Niagara Mohawk Power Corporation
North Shore Gas Company

Parent: Peoples Energy Corporation

Northern Illinois Gas Company

Parent: NICOR, Inc.

Ohio Gas Company
Orange & Rockland Utilities, Inc.
The Peoples Gas Light & Coke Company

Parent: Peoples Energy Corporation

The Peoples Natural Gas Company

Parent: Consolidated Natural Gas Company

Peoples Natural Gas

Division of UtiliCorp United Inc.

Richmond Gas Corporation
The River Gas Company

Parent: Consolidated Natural Gas Company

Rochester Gas and Electric Corporation
Southeastern Michigan Gas Company

Parent: Southeastern Michigan Gas Enterprises, Inc.

Union Electric Company
Virginia Natural Gas, Inc.

Parent: Consolidated Natural Gas Company

West Ohio Gas Company

Parent: Consolidated Natural Gas Company

Wisconsin Fuel and Light Company
Wisconsin Gas Company

Parent: WICOR, Inc.

Wisconsin Natural Gas Company

Parent: Wisconsin Energy Corporation

Wisconsin Southern Gas Company

WILLIAMS NATURAL GAS COMPANY

The Williams Companies, Inc.
Apco Argentina Inc.
Northwest Pipeline Corporation

APPENDIX B

EXCERPTS FROM:

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

For the Fiscal Year Ended December 31, 1989

Commission File No. 1-8968

ANADARKO PETROLEUM CORPORATION

(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	76-0146568 (I.R.S. Employer Identification No.)
16855 Northchase Drive, Houston, Texas (Address of executive offices)	77060 (Zip Code)

Registrant's telephone number: (713) 875-1101

* * * *

ITEM 3. Legal Proceedings

Order 451 On September 15, 1989, the Fifth Circuit Court of Appeals vacated FERC Order 451 which allowed gas producers to negotiate a price increase in certain NGPA subcategories of "old gas" up to an alternative maximum lawful ceiling price.

As a result of the application of Order 451, Anadarko was able to obtain a higher price for certain gas which

it sold during the period from August 1987 through July 1989. In addition to the reserves released under Order 451, some of the Company's gas reserves committed under long-term contracts were temporarily released under the provisions of a Limited Term Abandonment granted to the Company by FERC. Production from these reserves was sold under spot market contracts at prices above the NGPA maximum lawful price for old gas, pursuant to the pricing provisions of Order 451.

Anadarko's future natural gas sales will be largely unaffected by the Fifth Circuit Court's decision to invalidate Order 451. The Company took steps necessary to insure that a substantial portion of its regulated gas reserves qualified for early price decontrol under the Decontrol Act. As of March 31, 1989, Anadarko completed contract settlement negotiations with its major interstate pipeline purchasers, thereby providing for the termination of contracts and permanent release of virtually all of Anadarko's low-priced natural gas reserves. These settlements and contract terminations are consistent with current FERC contract-release procedures and are unaffected by the September 15, 1989 court decision regarding Order 451. Under the provisions of the Decontrol Act, future sales of this gas can be made at market prices.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 86-1806

IN RE KN ENERGY, INC.,
Petitioner.

Submitted: July 30, 1986

Filed: August 19, 1986

PETITION FOR WRIT OF PROHIBITION OR MANDAMUS

Before JOHN R. GIBSON, FAGG, and BOWMAN, Circuit Judges.

PER CURIAM.

Invoking this Court's authority under the All Writs Act, 28 U.S.C. § 1651(a), the Administrative Procedure Act, 5 U.S.C. § 705, and the Natural Gas Act, 15 U.S.C. § 717r, KN Energy, Inc. (KN) requests a writ of prohibition or of mandamus directing the Federal Energy Regulatory Commission (Commission) to vacate its Order 451, issued on June 6, 1986. Numerous parties have intervened, some supporting KN and some supporting the Commission. KN contends that in issuing Order 451 the Commission exceeded its jurisdiction, and that irreparable injury to KN and its customers will occur before the administrative and judicial review processes are completed. We find that effective and timely review is available and we decline to issue a writ.

We note first that while we do not rest our decision on the question of venue, we doubt that venue lies in this Court of Appeals. Without extended discussion, we simply note that KN's previous filings with the Commission state that Lakewood, Colorado is its principal place of business, and it is a Kansas corporation—both states being within the Tenth Circuit. Thus either the Tenth Circuit or the District of Columbia Circuit would appear to be the appropriate circuits in which KN could seek judicial review of Order 451. 15 U.S.C. §§ 717(r)(b) & 3416(a)(4).

Relief under the All Writs Act is an extraordinary remedy that a petitioner may invoke only if the ordinary available procedures are clearly inadequate. *Reynolds Metals Co. v. Federal Regulatory Commission*, 777 F.2d 760, 762 (D.C. Cir. 1985). The petitioner has the burden of showing that it is clearly and indisputably entitled to relief. *National Farmers' Organization v. Oliver*, 530 F.2d 815, 817 (8th Cir. 1976). The grant of the writs of prohibition or mandamus is within the sound discretion of this Court. *La Buy v. Howes Leather Co.*, 352 U.S. 249, 255 (1957); *Sound Investment & Realty Co. v. Harper*, 178 F.2d 274, 277 (8th Cir. 1949). Such writs, however, "may not be invoked as a substitute for appeal and . . . will not lie as a general rule where there is a remedy by appeal even in cases where such an appeal may involve inconvenience, delay or expense to the petitioner." *Id.* at 276-77; *In re State of South Dakota*, 692 F.2d 1158, 1161 (8th Cir. 1982); *In re State of Missouri*, 664 F.2d 178, 180 (8th Cir. 1981).

To issue a writ of prohibition or mandamus, we must find that there has been an abuse of or absence of jurisdiction in the proceedings below and that the normal appeals process will not provide an adequate remedy for an erroneous or unfounded decision. *See Kerr v. United States District Court*, 426 U.S. 394, 402-03 (1976) (as a condition for issuance of a writ, party seeking it must

have "no other adequate means to attain the relief he desires . . . ."); *Ex parte Davis*, 262 U.S. 274, 276 (1923) ("[B]y appeal in the ordinary way possible errors can be corrected; and there is no imperative reason for awarding a writ of prohibition."). It must "appear that petitioner has no other plain, adequate and complete method of obtaining the relief to which he is ultimately entitled. In other words, it must appear that without the issuance of the writ there will be a miscarriage of justice." *Harper*, 178 F.2d at 277.

Because we find that KN has failed to sustain its burden of showing that the normal administrative and judicial review processes would be ineffective, we do not reach the question of whether the Commission has abused its jurisdiction or was without jurisdiction to issue Order 451. We find that the normal administrative and judicial review processes will adequately protect KN's interests, and are capable of providing KN any relief to which it may ultimately be entitled. Currently, KN and others have petitions for rehearing concerning Order 451 pending before the Commission, and the Commission's order is not yet final. Thus, the Commission itself may yet resolve the issues raised by Order 451 in a manner satisfactory to KN and to others with similar interests. KN can obtain judicial review through the ordinary appeal process once the Commission's order becomes final. Moreover, if the Commission has not issued a final order by November 1, 1986, as counsel for the Commission at oral argument before this Court represented it will, then KN may seek a stay or other judicial relief from Order 451 at that time. Accordingly, the present petition is denied.

A true copy.

Attest:

Clerk, U.S. Court of Appeals, Eighth Circuit.

APPENDIX D

MOBIL NATURAL GAS INC.

Nine Greenway Plaza—Suite 2700
Houston, Texas 77046-0957

September 28, 1987

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Williams Natural Gas Company
One Williams Center
Post Office Box 3288
Tulsa, Oklahoma 74101

Attention: Mr. J. B. Killerlain

Re: FERC Order No. 451, et seq.

Gentlemen:

Pursuant to the provisions of 18 C.F.R. Section 270.201, Mobil Oil Corporation ("Mobil") hereby requests Williams Natural Gas Company ("Williams") to nominate a price at which Williams is willing to continue buying old gas under the following contracts between Mobil and Williams:

Contract Number		Contract	
Mobil	Williams	Date	Field
S-302	678	06/17/46	Hugoton Embayment
S-5521	2103	01/05/76	Hardtner
			Aetna Gas Area
			Driftwood
			Hugoton Gas Area
			Medicine Lodge N.
			Rhodes
			Rhodes N.E.
S-5547	2206/2205	01/31/77	Mocane/Laverne
			South Glenwood
S-6033	1308	02/01/61	Hugoton Embayment
S-6041	1329	02/13/61	Hugoton Embayment
S-6042	1321	03/15/61	Hugoton Embayment
S-6066	675	02/28/46	Hugoton Embayment
S-6067	1316	03/01/61	Hugoton Embayment
S-6110	1315	02/27/61	Comanche, Sterling S.E.

Very truly yours,

MOBIL OIL CORPORATION

/s/ B. J. White
B. J. WHITE
Attorney-in-Fact

REG,III:cch

WILLIAMS NATURAL GAS COMPANY
One of the Williams Companies

October 29, 1987

RETURN RECEIPT REQUESTED

Mobil Oil Corporation
Nine Greenway Plaza
Suite 2700
Houston, Texas 77046-0957

Attn: B. J. White

Re: Purchaser's Request for Seller To Nominate Price Under FERC Order Nos. 451 and 451-A—Gas Purchase Contract(s) between Mobil Oil Corporation (MOBIL) as Seller, and Williams Natural Gas Company (WNG) as Purchaser

Dear Mr. White:

On June 6, 1986, and December 15, 1986, the Federal Energy Regulatory Commission (FERC) issued Order Nos. 451 and 451-A, respectively, in Docket No. RM86-3. Order Nos. 451 and 451-A permit the renegotiation of the price of all gas under contracts covering some old gas (NGPA Sections 104 and 106(a) gas). That renegotiation process will commence if Seller initiates the "good faith negotiation" process provided in Section 270.201 of the FERC's regulations.

By letter dated September 28, 1987, MOBIL initiated the good faith negotiation process with WNG. WNG will respond to your good faith negotiation request within the sixty (60) day period provided by Order Nos. 451 and 451-A.

In the meantime, WNG hereby requests MOBIL to nominate a price at which MOBIL is willing to continue selling all gas covered by the contracts listed on the attached Exhibit "A", and any other contracts between WNG and

MOBIL or related service agreements which covered some old gas as of July 18, 1986, even if no gas was being sold as of July 18, 1986. If MOBIL is a division of a corporation, this request also covers all contracts covering some old gas between WNG and any other division of the same corporation.

This request is without prejudice to WNG's position that Order Nos. 451 and 451-A are invalid and to WNG's right to any available remedy should Order Nos. 451 and 451-A be reversed or modified. Responses to this request should be directed to the undersigned, Post Office Box 3288, Tulsa, Oklahoma 74101.

Sincerely,

/s/ J. B. Killerlain
J. B. KILLERLAIN
Director, Gas Sales

JBK-03/kjj

EXHIBIT "A"

CONTRACTS BETWEEN MOBIL OIL COMPANY
AND
WILLIAMS NATURAL GAS COMPANY

Contract Number			
Mobil	Williams	Date	Contract Field
S-302	678	06/17/46	Hugoton Embayment
S-5521	2103	01/05/76	Hardtner
			Aetna Gas Area
			Driftwood
			Hugoton Gas Area
			Medicine Lodge N.
			Rhodes
			Rhodes N.E.
S-5547	2206/2205	01/31/77	Mocane/Laverne
			South Glenwood
S-6033	1308	02/01/61	Hugoton Embayment
S-6041	1329	02/13/61	Hugoton Embayment
S-6042	1321	03/15/61	Hugoton Embayment
S-6066	675	02/28/46	Hugoton Embayment
S-6067	1316	03/01/61	Hugoton Embayment
S-6110	1315	02/27/61	Comanche, Sterling S.E.

MOBIL NATURAL GAS INC.

Nine Greenway Plaza—Suite 2700
Houston, Texas 77046-0957

November 2, 1987

RETURN RECEIPT REQUESTED

Williams Natural Gas Company
One Williams Center
Post Office Box 3288
Tulsa, Oklahoma 74101

Attention: Mr. J. B. Killerlain

FERC ORDER NO. 451, ET SEQ.

Gentlemen:

Pursuant to your request for price nomination of October 29, 1987 Mobil Oil Corporation (Mobil) nominates the price for regulated and deregulated gas as listed below.

Regulated Gas

The price for regulated gas shall be the highest price permissible by law of the following:

(a) $4.715/MMBtu for November, 1987 escalated in accordance with NGPA Section 101(a).

(b) If the Federal Energy Regulatory Commission, or any successor governmental agency having jurisdiction in the premises, acting under any section of the Natural Gas Policy Act of 1978 or other applicable law or regulation, shall at any time hereafter prescribe, permit, or establish by any lawful means, including by policy, rule, or order an upward revision to a maximum lawful rate, national ceiling, area or other ceiling for rates and charges for the sale or transfer of natural gas that is higher than the price herein provided (including gas of any and

all vintaging classifications) and which is applicable to the gas produced from Seller's properties, then the price provided under contract to be paid by Buyer to Seller for all such gas delivered or for which payment is due under the provisions of this contract shall be increased to equal such higher ceiling rate (including adjustments to such higher rate), effective the date for which such higher rate is prescribed, permitted or established. Adjustments to such higher rate shall include but not be limited to periodic rate increases; state or federal production, severance, or similar taxes and ad valorem taxes where based on production factors; upward and downward Btu adjustment; deeper drilling allowances; production related cost allowances; biennial or other review; and any other permissible adjustments. As often as the price for all or part of the gas subject to contract shall increase pursuant to this ceiling rate provision, such increased price shall be the contract price for gas under this contract and shall not be reduced in the event regulation of gas rates by the Federal Energy Regulatory Commission, or a successor, ceases or changes, and such price shall be subject to further increases in accordance with the section below on deregulated gas provisions of the contract.

Deregulated Gas

Notwithstanding any other provision of this contract, if at any time during the term of the contract, the Federal Energy Regulatory Commission (or any successor governmental authority) ceases to have authority to regulate the sale or transfer of gas under the contract, then and in any such event, a price redetermination shall be made as set forth below. The price redetermined hereunder shall in each instance be the higher of:

(a) The price in effect in this contract on the last day of the period immediately preceding the period

for which the price is being redetermined, escalated for inflation thereafter, in accordance with NGPA § 101(a).

(b) The arithmetic average of the three (3) highest prices then being paid by pipelines for gas of substantially the same quantity and quality or of lesser quantity or lower quality, and delivered under comparable conditions, and produced within the States of Oklahoma and Kansas.

(c) A price per million BTU (MMBTU) equivalent to one hundred twenty percent (120%) of the price per MMBTU for Fuel Oil No. 2 determined in the manner provided below. The price per gallon for Fuel Oil No. 2 shall be determined from the most recent monthly publication available to Seller of *Producer Price Indexes* as published by the U.S. Department of Labor, Bureau of Labor Statistics. Such price shall be derived from the table "Producer Price Indexes and percent changes for Commodity Groupings and Individual Items", under the grouping "Fuels and Related Products and Power", and subgrouping "Light Fuel Oils", under the listing "Fuel Oil No. 2 to Resellers." for use in converting the price per gallon for Fuel Oil No. 2 hereunder to cents per MMBTU, each gallon shall be deemed to contain 0.1387 MMBTU.

Said price shall be redetermined the earlier of ninety (90) days from the effective date of this amendment or within ninety (90) days after the cessation date and shall become effective for the one (1) year period commencing at the expiration of said ninety (90) day period. Thereafter, the price shall be redetermined for each succeeding annual period, using the above criteria. Such succeeding annual redetermination shall be conducted commencing ninety (90) days prior to the commencement of the annual period for which the redetermination is to be made. Buyer's obligation to pay any redetermined

price hereunder shall be limited to the portion which Seller certifies to Buyer that Seller is lawfully entitled to receive under this contract for the sale or transfer of gas.

Very truly yours,

MOBIL OIL CORPORATION

/s/ B. J. White
B. J. WHITE
Attorney-in-Fact

REGardner,III:cch

WILLIAMS NATURAL GAS COMPANY

One of the Williams Companies

November 25, 1987

CERTIFIED
RETURN RECEIPT REQUESTED

Mobil Oil Corporation
Nine Greenway Plaza
Suite 2700
Houston, Texas 77046-0957

Attn: B. J. White

Re: Purchaser's Price Nomination under FERC Orders No. 451 and 451-A—Gas Purchase Contracts Between Mobil Oil Corporation (Mobil) as Seller, and Williams Natural Gas Company (WNG) as Purchaser

Dear Mr. White:

On June 6, 1986, and December 15, 1986, the Federal Energy Regulatory Commission (FERC) issued Orders No. 451 and 451-A, respectively, in Docket No. RM86-3. Orders No. 451 and 451-A permit the renegotiation of the price of all gas under contracts covering some old gas (NGPA Sections 104 and 106(a) gas). That renegotiation process will commence if Seller initiates the "good faith negotiation" process provided in Section 270.201 of the FERC's regulations.

By your letter dated September 28, 1987, which we received September 30, Mobil initiated the good faith negotiation process with WNG. Subsequently, by letter dated October 29, 1987, WNG requested that Mobil nominate

a price at which Mobil is willing to continue selling all gas covered by the contracts in question between WNG and Mobil or related service agreements which covered some old gas as of July 18, 1986, even if no gas was being sold as of July 18, 1986. Mobil responded in a letter dated November 2, 1987, that Mobil would be willing to continue selling regulated gas at the maximum lawful price pursuant to Order 451, and it proposed to sell deregulated gas at the higher of three specified provisions.

WNG does not believe that the maximum lawful price for regulated gas, nor the potential price under the three-variable formula for deregulated gas is representative of a market price in the natural gas industry at present.

Accordingly, for all gas covered under the subject contracts WNG proposes * a price of $1.40 per MMBtu (inclusive of all adjustments), which is market responsive and provides a premium above the current spot market, recognizing the long-term nature of the supplies represented by the aforementioned contracts. WNG further proposes that the price be subject to annual redetermination and submission to arbitration in the event that the parties are unable to agree upon the appropriate fair market value for gas produced in the Kansas-Hugoton Field.

With respect to quantity, WNG proposes * to submit semi-annual purchase nominations. WNG will be obligated to take-or-pay for 75% of its semi-annual nomination. The volume in excess of WNG's nomination will be released for marketing by Mobil. Finally, in recognition of Mobil's desire to achieve relief from life of lease contracts, WNG proposes that the term provisions be amended to provide for a five year term.

We believe that a continuing arrangement structured around the principles presented in this proposal repre-

sents an approach to meet the challenges of the natural gas industry today. We will await your response.

Very truly yours,

/s/ Jack L. Finch
JACK L. FINCH
Vice President
Marketing & Supply

JLF-09/kjj

* This response is without prejudice to WNG's position that Orders No. 451 and 451-A are invalid and to WNG's right to any available remedy should Orders No. 451 and 451-A be reversed or modified.

MOBIL NATURAL GAS INC.

Nine Greenway Plaza—Suite 2700
Houston, Texas 77046-0957

November 30, 1987

RETURN RECEIPT REQUESTED

Mr. J. B. Killerlain
Director, Gas Supplies
Williams Natural Gas Company
One Williams Center
Post Office Box 3288
Tulsa, Oklahoma 74101

FERC ORDER NO. 451, et seq.

Dear Mr. Killerlain:

Mobil Oil Corporation ("Mobil") hereby rejects the price nominated by Williams Natural Gas Company ("Williams") for gas in your letter to Mobil dated November 25, 1987 which was received by Mobil on November 30 as it pertains to "old gas", NGPA Sections 104 and 106(a).

This letter shall also serve as notice that effective January 1, 1988 Mobil intends to terminate and abandon all sales of such "old gas" under the following contracts between Mobil and Williams:

Contract Number		Contract	
Mobil	Williams	Date	Field
S-302	678	06/17/46	Hugoton Embayment
S-5521	2103	01/05/76	Hardtner
			Aetna Gas Area
			Driftwood
			Hugoton Gas Area
			Medicine Lodge N.
			Rhodes
			Rhodes N.E.
S-5547	2206/2205	01/31/77	Mocane/Laverne
			South Glenwood
S-6033	1308	02/01/61	Hugoton Embayment
S-6041	1329	02/13/61	Hugoton Embayment

Contract Number		Contract	
Williams	Mobil	Date	Field
S-6042	1321	03/15/61	Hugoton Embayment
S-6066	675	02/28/46	Hugoton Embayment
S-6067	1316	03/01/61	Hugoton Embayment
S-6110	1315	02/27/61	Comanche, Sterling S.E.

Mobil interprets your letter of November 25, 1987 to be a rejection of the Mobil price nomination for all gas other than "old gas" in its letter of November 3, 1987.

Very truly yours,

MOBIL OIL CORPORATION

By /s/ B. J. White
B. J. WHITE
Attorney-in-Fact

REGardner:cch